IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2021

CORAM

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mr.Justice SATHI KUMAR SUKUMARA KURUP

T.C.A.No.456 of 2016

The Commissioner of Income tax,
Chennai. ...Appellant

-vs-

M/s.Data Software Research Company P. Ltd.
Kasturi Towers, No.6, Smith Road,
Chennai-600 002.
PAN: AAACD1271H ...Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order dated 17.07.2015 made in I.T.A.No.1838/Mds/2014 on the file of the Income Tax Appellate Tribunal 'B' Bench, Chennai for the assessment year 2009-10.

Against the appeallate order dated 17.03.2014 made in ITA No.760/11-12/A-1 passed by The Commissioner of Income Tax (Appeals)-1 Chennai for the Assessment year 2009-2010. Against the Assessment order dated 30.12.2011 made in PAN No.AAACD1271H passed by The Income Tax Department, Deputy Commissioner of Income Tax Company Circle–1(4) Chennai for the Assessment year 2009-2010.

For Appellant : Ms.R.Hemalatha,
Senior Standing Counsel

For Respondent : Mr.R.Venkatanarayanan
For M/s.Subbaraya Aiyar,
Padmanabhan & Ramamani

JUDGMENT

(Delivered by T.S.Sivagnanam, J.)

This appeal, by the appellant/Revenue, filed under Section 260A of the Income Tax Act, 1961 is directed against the order dated 17.07.2015, made in I.T.A.No.1838/Mds/2014 on the file of the Income Tax Appellate Tribunal 'B' Bench, Chennai (for brevity "the Tribunal") for the assessment year 2009-10.

2.The appeal was admitted on 26.07.2016, on the following substantial questions of law:-

> "1. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the brought forward losses of the domestic division need not be set off against the profit of the EOU (STPI Unit) while computing deduction under Section 10 B of the Income Tax Act in order to arrive at the net business loss?
>
> 2. Whether the finding of the Tribunal is proper by holding that any expenditure deducted from the export turnover should also be deducted from the total turnover while arriving at the eligible deduction made under Section 10 A which is contrary to the wording in the statute?
>
> 3. Is not the finding of the Tribunal bad especially when as per Explanation (2) (iii) to Section 10 B has defined the word Export Turnover by which freight telecommunication charges etc., are to be specifically excluded while computing deduction? and
>
> 4. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in directing the AO to disallow only 2% of the dividend income instead of 10% made by the AO without any rational basis?"

3.Perused the impugned order dated 17.07.2015, passed by the Tribunal and we find that the tax effect is below the threshold limit prescribed in the circular issued by the Central Board of Direct Taxes in Circular No.17/2019 dated 08.08.2019. Therefore, the Revenue cannot prosecute this appeal and accordingly, this appeal is dismissed on the ground of low tax effect and the substantial questions of law framed are left open. In the event, the tax effect is above the threshold limit fixed in the said circular, liberty is granted to the Revenue to make a mention to this Court to restore the appeal to be heard and decided on merits. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

abr

To

1. The Income Tax Appellate Tribunal 'B' Bench,
   Chennai.

2. The Commissioner of Income Tax(Appeals-1)
   Chennai.

3. The Deputy Commissioner of Income Tax
   Company Circle-1(4),
   Chennai.

+1cc to M/s.Subbaraya Ayar, Advocate, Sr.39624
+1cc to Mr.T.Ravi Kumar, Advocate, Sr.39688

T.C.A.No.456 of 2016

RLD[co]
NSK 26/08/2021